IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8823 of 2001
With
CRIMINAL MISC.APPLICATION No. 5399 of 2007
In CRIMINAL MISC.APPLICATION No. 8823 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GANSHYAMDAS NAUMAL KALWANI & 3 - Applicant(s)
Versus
MANOHARLAL NANAKRAM & 1 - Respondent(s)

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Appearance :
MR RK MISHRA for Applicant(s) : 1 - 4.
MR MM TIRMIZI for Respondent(s) : 1,
Mr. RC Kodekar, Addl. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/07/2007
ORAL JUDGMENT

By way of this application under Section 482 of the Code of Criminal Procedure the petitioners herein, original-accused have prayed

for an appropriate order to quash and set aside the proceedings initiated by means of issuance of process by the learned Metropolitan Magistrate, Court No. 13, Ahmedabad in Enquiry Case No. 51 of 2001 and sending it for investigation to Navrangpura Police Station under Section 156(3) of Cr.P.C., whereby the Navrangpura Police Station has registered the case as 'M. Case No. 1/2001'. It is the contention on behalf of the petitioner, original-accused that the dispute involved is of civil nature and only with a view to harass the petitioners the criminal proceedings have been initiated. It is submitted that a civil suit being Civil Suit No. 3663 of 2001 came to be filed by the respondent No.1, original-complainant and even another suit being Civil Suit No. 4174 of 2001 was also file in the City Civil Court at Ahmedabad. It is therefore submitted that the dispute involved is of civil nature as it may be evident from perusing the civil suit which came to be preferred by the complainant and initiation of criminal proceedings in question being Inquiry Case No.

51/2001 is nothing but abuse of process of law.

2. Learned Advocate appearing on behalf of respondent No.1 Shri MM Tirmizi has submitted that as such the parties have settled the dispute and requested to pass appropriate order. The learned Addl. Public Prosecutor has also requested to pass appropriate order considering the averments in the complaint and the nature of the dispute.

3. This Court has gone through the complaint in question being Inquiry Case No. 51 of 2001 which is culminated into M. Case No. 1 of 2001. On bare reading of the same and considering the averments in the complaint, it appears to the Court that the dispute is of civil nature for which proceedings were pending before the Civil Court. The averments in the application do not disclose any cognizable offence under I.P.C., and the dispute is converted into criminal proceeding. In the facts and circumstances of the case more particularly when the dispute is

pending before the Civil Court and that from the averments in the complaint it prima facie appears to this Court that it is a civil dispute, to continue the criminal proceedings would be nothing but a abuse of process of law and therefore the impugned Complaint/Inquiry Case/M. Case require to be quashed and set aside.

4. For the reasons stated above, the Inquiry Case No. 51 of 2001 pending in the Court of Metropolitan Magistrate, Court No. 13 at Ahmedabad and M. Case No. 1/2001 with the Navrangpura police station, and the process issued by the learned Metropolitan Magistrate, Court No. 13, Ahmedabad in Inquiry Case No. 51 of 2001 are hereby quashed and set aside. Rule is made absolute accordingly.

5. In view of disposal of Misc. Criminal Application No. 8823 of 2001, Shri RK Mishra, learned advocate seeks permission to withdraw the Misc. Criminal Application No. 5399 of 2007. Permission is accordingly granted. The

application shall stand dismissed as withdrawn.

[M.R. Shah, J.]

rmr.